



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1992

Mr. Eldridge Moak
Alto City Attorney
Sorrell & Moak
211 East Commerce
Jacksonville, Texas 75766

OR92-246

Dear Mr. Moak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15626.

The City of Alto (the "city"), which you represent, has received a request for information about its Chief of Police, Thomas E. Griffith. Specifically, the requestor seeks

any correspondence or other material directly related to the council's decision to hire Chief Griffith, including his resume. If other candidates for police chief were considered, please provide minutes, notes and resumes on them too.¹

You have submitted to us for review the chief's resume, handwritten notes regarding telephone conversations with the chief's references, an application for employment, several letters of recommendation, an affidavit attesting to the chief's experience, a personal history statement, a license issued by the Texas Commission on Law

¹In addition, the requestor seeks copies of the minutes of the open meeting and executive session of an August 26, 1991 council meeting which relate to the hiring of Chief Griffith. Minutes or tape recordings of open meetings are specifically made public by section 3B of the Open Meetings Act, art. 6252-17, V.T.C.S., and must therefore be released. Minutes of an executive session, however, are confidential by virtue of section 2A(c) of the Open Meetings Act. Open Records Decision No. 563 (1990). Accordingly, the requested executive session minutes must not be released.

Enforcement Officer Standards and Education, and a letter reflecting the chief's previous undercover status. You claim that this information is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(8), 3(a)(11), 3(a)(17), and 3(a)(19) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The doctrine of common-law privacy protects information containing highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, provided the information is not of legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also* Open Records Decision No. 441 (1986).

The public has a legitimate interest in the job qualifications of public employees. Open Records Decision Nos. 542 (1990); 470; 467 (1987). Information previously held by this office not to be protected by common-law or constitutional privacy interests includes employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performance or abilities, birth dates, height, weight, marital status, and social security number. *See* Open Records Decision No. 455 (1987) (copy enclosed).²

We have examined the documents submitted to us for review. The chief's resume, handwritten notes regarding references, application for employment, letters of recommendation, affidavit attesting to the chief's experience, personal history statement, license issued by the Texas Commission on Law Enforcement Officer Standards and Education, and letter reflecting the chief's previous undercover status contain no information which is intimate or embarrassing. Furthermore, we conclude that this information is of legitimate public concern and may not be withheld from required public disclosure by common-law privacy interests as incorporated into sections 3(a)(1) and 3(a)(2) of the Open Records Act.

²We are unaware of any federal statute or regulation which makes a person's social security number confidential, as you claim.

You also claim that the police chief's resume is excepted from required public disclosure by section 3(a)(8).³ Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

You claim that the police chief's resume is excepted by section 3(a)(8) "because it contains references to prior undercover work by the Chief." A third party has expressed its objection to release of certain information contained in the resume and a letter that reveals the chief's prior undercover status, claiming that their release would undermine a legitimate interest of law enforcement. Similar information is contained in the handwritten notes. The letter may be withheld from required public disclosure in its entirety under section 3(a)(8). Information on the resume and in handwritten notes which reveals the nature of the chief's undercover status may also be withheld. For your convenience, we have marked the information that may be withheld from required public disclosure under section 3(a)(8).

You claim that notations contained in the police chief's personnel file regarding information given by persons who served as references and letters of reference are excepted from required public disclosure by section 3(a)(11) which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between

³If information has already been publicly disclosed, it may ordinarily not be withheld in the future. Open Records Decision No. 436 (1986). We assume that the resume was prepared exclusively for the chief's application to the city and that it was not distributed to other places of employment.

agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470. Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). Letters of reference in an employee's personnel file may be withheld under section 3(a)(11) where the governmental body (1) has the authority to conduct an evaluation of the employee, (2) initiated the recommendation, and (3) has a purpose for seeking the references. Open Records Decision No. 565 (1990); see also Open Records Decision No. 466 (1987).

The chief appears to have applied for this position in August 1991. The letters of reference submitted to us for review were written in 1988 and 1989, some time prior to the date the chief of police applied for the position. Obviously, the city did not initiate these recommendations. Therefore, they may not be withheld from required public disclosure under section 3(a)(11) because the persons who drafted them were not authorized to act, and did not in fact act, in any official capacity on behalf of the police department. However, the handwritten notes of telephone conversations with the chief's references relate to recommendations which appear to have been initiated by the city. Some of the notes contain advice, opinion, or recommendation which may be withheld from required public disclosure under section 3(a)(11). For your convenience, we have marked the information which may be withheld.

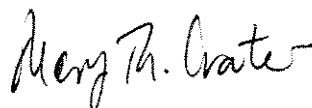
You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(17), which excepts "the home addresses and home telephone numbers . . . of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code." You may withhold the home address and telephone number of the chief of police wherever such information appears in the documents.⁴

⁴Although you have submitted no photograph of the chief to us for review, you claim that some of this information is excepted by section 3(a)(19), which excepts from required public disclosure

photographs that depict a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer unless:

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-246.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Enclosure: Open Records Decision No. 455

Ref.: ID# 15626
ID# 15759

(A) the officer is under indictment or charged with an offense by information; or

(B) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(C) the photograph is introduced as evidence in a judicial proceeding.

Open Records Decision No. 502 (1988) held that section 3(a)(19) "protects from required public disclosure all photographs of peace officers unless the circumstances in subsections (A), (B), and/or (C) of section 3(a)(19) occur or the peace officer gives written consent to release as provided in section 3(c)." You have not indicated that any of the circumstances in subsections (A), (B), and/or (C) have occurred or that the police chief has given written consent to release of his photographs. Accordingly, unless any circumstances in subsections (A), (B), and/or (C) have occurred, any photographs of the police chief may be withheld from required public disclosure under section 3(a)(19).

cc: A. J. Giametta
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